

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THOMAS DALE LATIN,

Plaintiff,

V.

JOHNATHON EATON, ET AL.,

Defendants.

§
§
§
§
§
§
§
§
§

No. 3:19-cv-2098-M-BN

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Thomas Dale Latin, a resident of Gun Barrel City, Texas, filed a *pro se* “Civil (Family) Suit” alleging claims of abuse. *See* Dkt. Nos. 3 & 4.

His lawsuit was referred to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference from Chief Judge Barbara M. G. Lynn.

After reviewing Latin’s complaint, the Court ordered that he show in writing that the Court has subject matter jurisdiction over his lawsuit. *See* Dkt. No. 8. He filed several notices with the Court approximately one week after the Court entered this order, *see* Dkt. Nos. 9, 10, 11, & 12, but none of these substantively address the Court’s subject matter jurisdiction. And Latin did not otherwise comply with the Court’s order or subsequently contact the Court.

Considering the complaint and Latin’s notices, the undersigned enters these findings of fact, conclusions of law, and recommendation that the Court should dismiss this action without prejudice for lack of subject matter jurisdiction.

“Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider.” *Bowles v. Russell*, 551 U.S. 205, 212 (2007); *see also Stockman v. Fed. Election Comm’n*, 138 F.3d 144, 151 (5th Cir. 1998) (“Federal courts are courts of limited jurisdiction, and absent jurisdiction conferred by statute, lack the power to adjudicate claims.”). Correspondingly, federal courts have an independent duty to examine their own subject matter jurisdiction. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583-84 (1999) (“Subject-matter limitations ... keep the federal courts within the bounds the Constitution and Congress have prescribed. Accordingly, subject-matter delineations must be policed by the courts on their own initiative even at the highest level.” (citations omitted)).

Because Latin chose to file his lawsuit in federal court, it is his burden to establish federal jurisdiction. *See Butler v. Dallas Area Rapid Transit*, 762 F. App’x 193, 194 (5th Cir. 2019) (per curiam) (“[A]ssertions [that] are conclusory [] are insufficient to support [an] attempt to establish subject-matter jurisdiction.” (citing *Evans v. Dillard Univ.*, 672 F. App’x 505, 505-06 (5th Cir. 2017) (per cuiam); *Jeanmarie v. United States*, 242 F.3d 600, 602 (5th Cir. 2001))). And if he does not, this lawsuit must be dismissed. *See* FED. R. CIV. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

Under their limited jurisdiction, federal courts generally may only hear a case if it involves a question of federal law or where diversity of citizenship exists between the parties. *See* 28 U.S.C. §§ 1331, 1332. In diversity cases, each plaintiff’s citizenship must be diverse from each defendant’s citizenship, and the amount in controversy must

exceed \$75,000. *See* 28 U.S.C. § 1332(a), (b). Federal question jurisdiction under Section 1331 “exists when ‘a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.’” *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 172 (5th Cir. 2009) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 27-28 (1983)). “A federal question exists ‘if there appears on the face of the complaint some substantial, disputed question of federal law.’” *In re Hot-Hed Inc.*, 477 F.3d 320, 323 (5th Cir. 2007) (quoting *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 366 (5th Cir. 1995)).

The Court will not assume it has jurisdiction. Rather, “the basis upon which jurisdiction depends must be alleged affirmatively and distinctly and cannot be established argumentatively or by mere inference.” *Getty Oil Corp. v. Ins. Co. of N.A.*, 841 F.2d 1254, 1259 (5th Cir. 1988) (citing *Ill. Cent. Gulf R. Co. v. Pargas, Inc.*, 706 F.2d 633, 636 & n.2 (5th Cir. 1983)); *see also MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 313 (5th Cir. 2019) (“Because federal courts have limited jurisdiction, parties must make ‘clear, distinct, and precise affirmative jurisdictional allegations’ in their pleadings.” (quoting *Getty Oil*, 841 F.2d at 1259)).

Even with Latin’s sparse factual allegations, it is plausible that he has sued defendants who are also Texas citizens. *See* Dkt. No. 3. And, to the extent that he asserts that there is jurisdiction based on a federal question, no facts in the complaint plausibly allege a violation of federal law. *See, e.g., Mitchell v. Clinkscales*, 253 F. App’x 339, 340 (5th Cir. 2007) (per curiam) (“The complaint contains no allegation that

Mitchell and Clinkscales are citizens of different states; thus, Mitchell failed to plead and establish subject-matter jurisdiction based on the existence of complete diversity. Additionally, although Mitchell argues that Clinkscales is liable under 42 U.S.C. § 1983, Mitchell does not allege facts demonstrating that Clinkscales acted under color of state law; thus, Mitchell failed to plead and establish subject-matter jurisdiction based on the existence of a federal question. [And t]he district court was required to dismiss the complaint.” (citations omitted)); *see also Butler*, 762 F. App’x at 194.

Latin has thus failed to show that the Court possesses subject matter jurisdiction over his claims. The Court should therefore dismiss this action without prejudice.

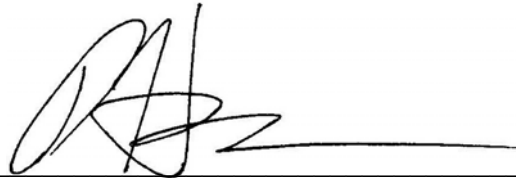
Recommendation

The Court should dismiss this action without prejudice under Federal Rule of Civil Procedure 12(h)(3).

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge’s findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure

to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: February 28, 2020

A handwritten signature in black ink, appearing to read 'DH', followed by a long horizontal line extending to the right.

DAVID L. HORAN
UNITED STATES MAGISTRATE JUDGE